IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY

TUESDAY, THE 4TH DECEMBER 2007 / 13TH AGRAHAYANA 1929

CRL.A.No. 171 of 2001()

CRA.72/1998 of ADDL.SESSIONS COURT, PARAVUR
S.T.NO.1312/1995 OF JUDICIAL FIRST CLASS MAGISTRATE, ALUVA

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APPELLANT/RESPONDENT NO.2 IN CRL.A/COMPLAINANT:

A.V.POULOSE,S/O.VARGHESE,ARACKAPARAMBIL VEEDU, NADUVATTOM, MANJAPRA.

BY ADV.SRI.K.N.NARAYANA PILLAI
SRI.P.VISWANATHAN
SRI.S.VIDYASAGAR

RESPONDENTS/APPELLANTS/ACCUSED AND STATE OF KERALA:

1.SUNIL KUMAR,S/O.THANKAPPAN, WILLIYAMANGALATH VEEDU, KALADY,ALUVA TALUK.

2.STATE OF KERALA, REP. BY PUBLIC PROSECUTOR

BY ADV. SRI.V.RAJENDRAN (PERUMBAVOOR) FOR R1
SRI.GEORGE VARGHESE KIZHAKKAMBALAM
PUBLIC PROSECUTOR SRI.NOBLE MATHEW FOR R2

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 04/12/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.KOSHY, J.

Criminal Appeal.No.171 OF 2001 ()

Dated this the 4th day of December, 2007

J U D G M E N T

This appeal is filed with permission of this Court as provided under Section 378 (4) of the Code of Criminal Procedure by the complainant against acquittal of the 1st respondent in an offence punishable under Section 138 of the Negotiable Instruments Act. The case of the complainant was that, the respondent borrowed Rs.50,000/- from the complainant on 14.2.1995. But accused did not pay the amount even after repeated demands as it was returned with the endorsement “insufficiency of funds”. After complying statutory formalities, complaint was filed as he has committed offence punishable under Section 138 of the Negotibale Instruments Act. Trial court convicted the accused and three months imprisonment was ordered. Against that appeal is filed. Appellate court also found the execution of the cheque by the 1st respondent and also found that cheque was

dishonoured for insufficiency of funds and statutory formalities were complied with before filing a complaint. Only ground for acquittal was that cheque was issued only as a security. Issuance of the cheque as security is sufficient consideration and it cannot be stated that there is no legally enforceable liability, and therefore, merely because Ext.P1 issued as security for some other financial transactions is not a ground to acquit the accused. Specific case of the complainant is that accused borrowed an amount of Rs.50,000/- and cheque was given and inspite of making demands, it is not paid and on presentation of the cheque, it was dishonoured. The following are the findings of the appellate court:

> "If the cheque was actually issued in discharge of a debt, there was no need for the complainant to make demands for payment of the cheque amount by the accused. He could have straight-away presented the cheque for payment if the same was issued in discharge of the debt. The complainant as PW1 has also deposed that demands were made by him for payment of the cheque amount. To a definite question put to him by the learned counsel for the accused whether the cheque was issued as security, the answer given by the complainant is in the affirmative. In the cross-examination, he has also deposed that it was agreed that he will

> return the cheque when the amount is repaid. This is yet another circumstance which would go to show that the cheque was issued not in discharge of a debt, but only as a security."

Merely because amount borrowed was demanded before presentation of the cheque, there is no infirmity. Cheque was issued for valid consideration and respondent was not able to rebutt the presumption under Section 139 of the Negotiable Instruments Act. In the above circumstances, I set aside the impugned judgment and convict the appellant till the rising of the court and pay a compensation of Rs.50,000/-, failing which, he has to undergo default imprisonment of three months. With the above observations this appeal is allowed.

J.B.KOSHY, JUDGE

prp

J.B.KOSHY

Criminal.Appeal.171 OF 2001

J U D G M E N T

4th December, 2007